

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MILLENIUM DRILLING CO., INC.,
Pla
v.
BEVERLY HOUSE-MEYERS
RECOVABLE TRUST, et al.,
Defend

Case No. 2:12-cv-00462-MMD-CWH

ORDER

(Third-Party Def.'s Motion to Dismiss – dkt. no. 202)

I. SUMMARY

Before the Court is Third-Party Defendant Carter Henson Jr.’s Motion to Dismiss (“Motion”). (Dkt. no. 202). The Court has also reviewed a response filed by Third-Party Plaintiffs Molly Hamrick, Beverly House-Meyers, and R & M Hamrick Family Trust (dkt. no. 215), and Henson’s reply (dkt. no. 222). For the reasons discussed below, the Motion is granted.

II. BACKGROUND

A. Facts

Plaintiff Millennium Drilling Co., Inc. (“Millennium”) alleges that Defendants Beverly House-Meyers Revocable Trust; Grace Mae Properties, LLC; R & M Hamrick Family Trust; Robert H. Hamrick; Molly Hamrick; and Beverly House-Meyers acquired interests in several partnerships — Falcon Drilling Partners (“Falcon”), Colt Drilling Partners (“Colt”), and Lion Drilling Partners (“Lion”) — engaged in oil and gas exploration. (See dkt. no. 30 at 2-15.) Millennium, in turn, entered into agreements with those partnerships to provide exploratory drilling and related services on certain sites, some of which were acquired through an agreement with Third-Party Defendant Patriot

1 Exploration Company, LLC (“Patriot”). (*Id.* ¶¶ 12, 31, 89, 128.) Alleging that Falcon, Colt,
 2 and Lion defaulted on their obligations under those agreements, Millennium now seeks
 3 compensation from Defendants for the work Millennium claims to have performed
 4 pursuant to the agreements. (See *id.* at 5-6, 9-10, 13, 15.)

5 Third-Party Plaintiffs separately allege that they were fraudulently induced into
 6 purchasing oil and gas investments by Third-Party Defendants Patriot, Henson, and
 7 Jonathan Feldman, among others. (See Notice of Removal, Exh. 1, *Hamrick v. Feldman*,
 8 No. 2:13-cv-0078-MMD-CWH (D. Nev. July 16, 2012) [hereinafter Dkt. no. 1-1, 2:13-cv-
 9 78].)¹ Third-Party Plaintiffs contend that Feldman and Henson created partnerships for
 10 oil and gas exploration (including Falcon, Colt, and Lion), which they fraudulently
 11 convinced investors to fund by misrepresenting expected returns and tax benefits. (See
 12 *id.* ¶¶ 4.01–4.18.)

13 Feldman, according to Third-Party Plaintiffs, is the President of Patriot and
 14 Millennium, and Henson was Patriot’s Managing Director. (*Id.* ¶ 4.01.) Patriot is an
 15 Alaska corporation with an office in Houston, Texas. (*Id.* ¶ 2.07.) Henson also resides in
 16 Texas. (*Id.* ¶ 2.08.)

17 **B. Procedural History**

18 On March 19, 2012, Millennium filed this lawsuit in the District of Nevada. (Dkt.
 19 no. 1.) Three months later, on June 6, 2012, Third-Party Plaintiffs filed a complaint
 20 against Third-Party Defendants — but not against Millennium — in Texas state court
 21 based on the same transactions giving rise to Millennium’s lawsuit. (Dkt. no. 1-1, 2:13-
 22 cv-78.) Patriot removed the case to the Southern District of Texas. (Notice of Removal,
 23 2:13-cv-78.) Third-Party Plaintiffs allege breach of fiduciary duty, fraud/fraud in the
 24 inducement, fraudulent nondisclosure, negligent misrepresentation, breach of contract,
 25 imposition of constructive trust, and conspiracy. (Dkt. no. 1-1, 2:13-cv-78.)

26
 27 ¹The Court consolidated Third-Party Plaintiffs’ separate lawsuit with case number
 28 2:12-cv-00462-MMD-CWH (“2:12-cv-462”). After consolidation, the Court directed the
 parties to file all documents in case number 2:12-cv-462. In citing to any documents filed
 in Third-Party Plaintiffs’ separate lawsuit, the Court will refer to “2:13-cv-78.”

1 In January 2013, Hon. Melinda Harmon, United States District Judge for the
 2 Southern District of Texas, granted Patriot's Motion to Transfer Venue, determining that
 3 the Nevada and Texas actions involved substantially similar issues. (Transfer Order,
 4 2:13-cv-78 (Jan. 15, 2013).) The transferred case was assigned case number 2:13-cv-
 5 00078-MMD-CWH ("2:13-cv-78"). This Court consolidated the two related cases into the
 6 first-filed Nevada action. (Dkt. no. 79). The plaintiffs and defendants in 2:13-cv-78 were
 7 designated as Third-Party Plaintiffs and Third-Party Defendants, respectively, in the
 8 instant case. (*Id.*)

9 On February 25, 2014, the Court granted a motion to dismiss filed by Third-Party
 10 Defendants Matthew Barnes; Montcalm Co., LLC; and Schain, Leifer, Guralnick
 11 ("SLG").² (Dkt. no. 172.) The Court found that it lacked personal jurisdiction over those
 12 parties. (*Id.*; see dkt. no. 168.) The day before oral argument on the motion, Third-Party
 13 Plaintiffs filed an amended complaint without requesting leave from the Court or
 14 obtaining the opposing parties' consent. (See dkt. no. 166.) The Court clarified in the
 15 dismissal order that the amended complaint was not properly before the Court, and that
 16 it failed to cure the jurisdictional problems with regard to Barnes, Montcalm, and SLG.
 17 (See dkt. no. 172 at 4.) Shortly after oral argument, Third-Party Plaintiffs sought leave to
 18 file a second amended complaint, which the Court denied in light of the late stage of the
 19 proceedings. (Dkt. nos. 171, 179.)

20 The Court now addresses Third-Party Defendant Henson's Motion to Dismiss for
 21 Lack of Personal Jurisdiction, filed February 5, 2015. (Dkt. no. 202.)

22 **III. LEGAL STANDARD**

23 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, a
 24 plaintiff bears the burden of establishing that jurisdiction is proper. *Boschetto v. Hansing*,
 25 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, the defendant's motions are based
 26

27 ²The parties had previously stipulated to dismiss Third-Party Defendants Robert
 28 Holt and Elizabeth Holt from the lawsuit. (Dkt. nos. 169, 170.)

1 on written materials rather than an evidentiary hearing, “the plaintiff need only make a
 2 ‘prima facie showing of jurisdictional facts to withstand the motion to dismiss.’” *Brayton*
 3 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (quoting
 4 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)). The plaintiff cannot
 5 “simply rest on the bare allegations of its complaint,” but uncontested allegations in
 6 the complaint must be taken as true. *Schwarzenegger v. Fred Martin Motor Co.*, 374
 7 F.3d 797, 800 (9th Cir. 2004) (quoting *Ambar Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d
 8 784, 787 (9th Cir. 1977)). The court “may not assume the truth of allegations in a
 9 pleading which are contradicted by affidavit,” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*,
 10 557 F.2d 1280, 1284 (9th Cir. 1977), but it may resolve factual disputes in the plaintiff’s
 11 favor. *Pebble Beach Co.*, 453 F.3d at 1154.

12 **IV. DISCUSSION**

13 A two-part analysis governs whether a court retains personal jurisdiction over a
 14 nonresident defendant. “First, the exercise of jurisdiction must satisfy the requirements of
 15 the applicable state long-arm statute.” *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398,
 16 1404 (9th Cir. 1994). Since “Nevada’s long-arm statute, NRS § 14.065, reaches the
 17 limits of due process set by the United States Constitution,” the Court moves on to the
 18 second part of the analysis. *Baker v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 999
 19 P.2d 1020, 1023 (Nev. 2000). “Second, the exercise of jurisdiction must comport with
 20 federal due process.” *Chan*, 39 F.3d at 1404-05. “Due process requires that nonresident
 21 defendants have certain minimum contacts with the forum state so that the exercise of
 22 jurisdiction does not offend traditional notions of fair play and substantial justice.” *Id.*
 23 (citing *International Shoe v. Washington*, 326 U.S. 310 (1945)). Courts analyze this
 24 constitutional question with reference to two forms of jurisdiction: general and specific
 25 jurisdiction. Here, Third-Party Plaintiffs assert only specific jurisdiction with regard to
 26 Henson. (See dkt. no. 215 at 5-6.)

27 Specific jurisdiction exists where “[a] nonresident defendant’s discrete, isolated
 28 contacts with the forum support jurisdiction on a cause of action arising directly out of its

1 forum contacts.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1075 (9th
 2 Cir. 2011). Courts use a three-prong test to determine whether specific jurisdiction exists
 3 over a particular cause of action:

4 (1) The non-resident defendant must purposefully direct his activities or
 5 consummate some transaction with the forum or resident thereof; or
 6 perform some act by which he purposefully avails himself of the privilege of
 7 conducting activities in the forum, thereby invoking the benefits and
 8 protections of its laws; (2) the claim must be one which arises out of or
 9 relates to the defendant’s forum-related activities; and (3) the exercise of
 10 jurisdiction must comport with fair play and substantial justice, i.e., it must
 11 be reasonable.

12 *Id.* at 1076 (quoting *Schwarzenegger*, 374 F.3d at 802). The party asserting jurisdiction
 13 bears the burden of satisfying the first two prongs. *Id.* (citing *Sher v. Johnson*, 911 F.2d
 14 1357, 1361 (9th Cir. 1990)). If it does so, the burden shifts to the party challenging
 15 jurisdiction “to set forth a ‘compelling case’ that the exercise of jurisdiction would not be
 16 reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78
 17 (1985)).

18 Third-Party Plaintiffs seek to invoke this Court’s jurisdiction over Henson based on
 19 actions he allegedly carried out while serving as the Managing Director of Patriot
 20 between 2005 and 2007.³ (See dkt. no. 215 at 3-5.) In that role, Henson was responsible
 21 for “evaluating and providing technical advice on all aspects of the Company’s
 22 investments and activities.” (Dkt. no. 215-3 at 1.) Third-Party Plaintiffs claim that Henson
 23 and Feldman⁴ created entities — including Falcon, Colt, Lion, Millennium, and Patriot —
 24 through which they defrauded Third-Party Plaintiffs. (Dkt. no. 1-1, 2:13-cv-78, at 9.) They
 25 further allege that Henson and Feldman conspired in, aided, and abetted each other’s

26 ³Henson claims that he was merely an employee of Patriot. Third-Party Plaintiffs,
 27 however, attached to their response a letter offering Henson the position of “Managing
 28 Director” of Patriot. (See dkt. no. 215-3 at 1.) During his deposition, moreover, Henson
 acknowledged that “Managing Director” was his only title while he worked for Patriot.
 (Dkt. no. 215-1 at 13.)

⁴Initially, Third-Party Plaintiffs claimed that Barnes was similarly involved in
 creating these entities and in using them to engage in fraud. (See dkt. no. 1-1, 2:13-cv-
 78.) The Court, however, dismissed Barnes from this lawsuit for lack of personal
 jurisdiction. (Dkt. no. 172.)

1 fraudulent conduct, both individually and as agents of Patriot and Millennium. (See *id.* ¶¶
 2 4.11-4.18.) Henson, for example, provided information about Patriot's drilling operations
 3 to Feldman, who relayed that information to outside investors — including Third-Party
 4 Plaintiffs — through quarterly reports. (Dkt. no. 215 at 3-5.) Taken together, Third-Party
 5 Plaintiffs argue, these actions constitute knowing and intentional tortious behaviors
 6 directed toward Nevada, which are sufficient to establish specific jurisdiction over
 7 Henson. The Court disagrees.

8 **A. Purposeful Availment and Purposeful Direction**

9 “The first prong of the specific jurisdiction test refers to both purposeful availment
 10 and purposeful direction.” *CollegeSource, Inc.*, 653 F.3d at 1076. Cases involving
 11 tortious conduct are analyzed under the rubric of purposeful direction. *Id.* (citing
 12 *Schwarzenegger*, 374 F.3d at 802). Courts ask “whether a defendant ‘purposefully
 13 directs his activities’ at the forum state,” and applies an “effects” test that looks to where
 14 the defendant’s actions were felt, rather than where they occurred. *Yahoo! Inc. v. La*
 15 *Ligue Contre Le Racism Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en
 16 banc) (quoting *Schwarzenegger*, 374 F.3d at 803). In contract cases, a court examines
 17 “whether the defendant ‘purposefully avails itself of the privilege of conducting activities’
 18 or ‘consummates a transaction’ in the forum, focusing on activities such as delivering
 19 goods or executing a contract.” *Id.* (quoting *Shwarzenegger*, 374 F.3d at 802).

20 Here, because Third-Party Plaintiffs’ claims sound in contract and tort, the Court
 21 will address both approaches to this prong of the specific jurisdiction analysis. See
 22 *Yahoo! Inc.*, 433 F.3d at 1206 (noting that the first prong “may be satisfied . . . by some
 23 combination” of purposeful availment and purposeful direction).

24 **1. Purposeful Availment**

25 Purposeful availment occurs when a defendant “‘deliberately’ has engaged in
 26 significant activities within a state, or has created ‘continuing obligations’ between
 27 himself and residents of the forum.” *Burger King Corp.*, 471 U.S. at 475-76 (citations
 28 omitted). A single act associated with a forum state may be sufficient, “[s]o long as it

1 creates a ‘substantial connection’ with the forum.” *Id.* at 475 n.18 (quoting *McGee v.*
2 *International Life Ins. Co.*, 355 U.S. 220, 223 (1957)). Activities constituting purposeful
3 availment may include “executing or performing a contract” in a forum state,
4 *Schwarzenegger*, 374 F.3d at 802, or delivering “products into the stream of commerce
5 with the expectation that they will be purchased by consumers in the forum State’ and
6 [where] those products subsequently injure forum consumers.” *Burger King Corp.*, 471
7 U.S. at 473 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98
8 (1980)). In assessing purposeful availment, courts have examined parties’ “prior
9 negotiations and contemplated future consequences, along with the terms of the
10 contract and the parties’ actual course of dealing.” *Id.* at 479.

11 Third-Party Plaintiffs argue that Henson “purposefully avail[ed] [him]self of the
12 privilege of conducting activities within” Nevada by conspiring to induce state residents
13 to invest in oil and gas prospects. *Id.* at 475 (quoting *Hanson v. Denckla*, 357 U.S. 235,
14 253 (1958)); (see dkt. no. 215 at 6-7). They assert that Henson provided information
15 about oil and gas prospects to Feldman, who, in turn, passed along the information to
16 Nevada-based investors. (See dkt. no. 215 at 3-5, 7.) Henson, according to Third-Party
17 Plaintiffs, knew both that investors would rely on the information he provided, and that
18 certain investors were Nevada residents. (*Id.* at 7.) Third-Party Plaintiffs, however, have
19 not made a *prima facie* showing that Henson knew or expected that Nevada-based
20 investors would rely on this information.

21 In his deposition, Henson conceded that he provided periodic written updates on
22 oil and gas prospects to Feldman, who was based in either New York or Connecticut.
23 (See dkt. no. 215 at 4; dkt. no. 215-1 at 4-5, 7.) Upon reviewing certain reports Feldman
24 had sent to outside investors, Henson acknowledged that Feldman’s reports appeared to
25 include language from Henson’s updates. (See dkt. no. 215 at 4; dkt. no. 215-1 at 9-10;
26 dkt. no. 215-2.) But Henson testified that he did not know whether Feldman had shared
27 his updates with investors, or that any of those investors were located in Nevada. (Dkt.
28 no. 215-1 at 7, 9-10, 30.) Nor did Henson communicate with outside investors. (*Id.* at

1 13.) Rather, according to Henson's testimony, Feldman controlled communications with
 2 investors, while Henson researched and assessed oil and gas prospects from his office
 3 in Houston. (See *id.* at 7-8, 11-14.)

4 Despite Third-Party Plaintiffs' assertions that Henson knew or should have known
 5 that he helped dupe Nevada residents into faulty investments, they have not offered
 6 evidence to dispute Henson's deposition testimony. (See dkt. no. 215 at 7.) Instead,
 7 Third-Party Plaintiffs concede that communications containing Henson's research "were
 8 presumably prepared by Feldman in New York." (*Id.* at 4.) Moreover, even assuming that
 9 Henson introduced information on oil and gas prospects into the stream of commerce by
 10 relaying his updates to Feldman, Third-Party Plaintiffs have not shown that Henson had
 11 any expectation that this information would be consumed by investors in Nevada. See
 12 *Burger King Corp.*, 471 U.S. at 473. Thus, to the extent Henson had any connection with
 13 Nevada-based investors, that contact is too attenuated to show purposeful availment.
 14 The Court accordingly finds that Third-Party Plaintiffs have not met their burden of
 15 showing that Henson purposefully availed himself of Nevada's laws and protections.

16 **2. Purposeful Direction**

17 Third-Party Plaintiffs' arguments are similarly deficient under the purposeful
 18 direction framework that applies to their tort-based claims. To assess purposeful
 19 direction, courts employ an "effects" test, which requires that "the defendant allegedly
 20 must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
 21 causing harm that the defendant knows is likely to be suffered in the forum state."
 22 *Yahoo! Inc.*, 433 F.3d at 1206 (quoting *Schwarzenegger*, 374 F.3d at 803). As the Ninth
 23 Circuit has made clear in applying the effects test, an act with foreseeable effects in the
 24 forum is not sufficient; there must be "something more" — namely, "express aiming" at
 25 the forum state. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th
 26 Cir. 2000), abrogated on other grounds by *Yahoo! Inc.*, 433 F.3d at 1206-08; see also
 27 *Liberty Media Holdings, LLC v. Letyagin*, 925 F. Supp. 2d 1114, 1118 (D. Nev. 2013).

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1 Third-Party Plaintiffs cannot make a *prima facie* showing of purposeful direction
 2 because they have not demonstrated that Henson expressly aimed any activity at
 3 Nevada. They claim that Henson “knowingly directed” intentional torts to Nevada by
 4 conspiring with Feldman to induce investments in oil and gas prospects. (Dkt. no. 215 at
 5 9; see dkt. no. 1-1, 2:13-cv-78, ¶¶ 4.01, 4.05, 4.11.) They further allege that Henson
 6 “reached out to harm Third-Party Plaintiffs Hamrick and House-Myers” (dkt. no. 215 at
 7 9), but offer no evidence to dispute Henson’s testimony that he never communicated
 8 with outside investors. (See dkt. no. 215-1 at 7-10, 13.) Third-Party Plaintiffs also point
 9 out that Henson was involved in contracts, invoices, and email communications for
 10 acquiring interests in and assessing oil and gas prospects. (Dkt. no. 215-3.) Those
 11 documents, however, do not suggest that Henson directed tortious activity toward
 12 Nevada; rather, they indicate his involvement in Patriot’s work of analyzing and securing
 13 oil and gas prospects. (See *id.*)

14 Even after resolving all factual disputes in Third-Party Plaintiffs’ favor, the Court
 15 finds that Third-Party Plaintiffs have failed to make a *prima facie* showing of purposeful
 16 direction. See *Pebble Beach Co.*, 453 F.3d at 1154. Because Third-Party Plaintiffs
 17 cannot satisfy the first prong of the personal jurisdiction analysis, the Court will grant
 18 Henson’s Motion.

19 **B. Relatedness and Fairness**

20 The Court finds that Third-Party Plaintiffs have failed to demonstrate an element
 21 that is necessary to establish specific jurisdiction over Henson. Accordingly, the Court
 22 will not reach the remaining two prongs of the specific jurisdiction analysis — whether
 23 Third-Party Plaintiffs’ action arises out of Henson’s forum-related activities, and whether
 24 asserting personal jurisdiction over Henson is reasonable. See *CollegeSource, Inc.*, 653
 25 F.3d at 1075.

26 **V. CONCLUSION**

27 The Court notes that the parties made several arguments and cited to several
 28 cases not discussed above. The Court has reviewed these arguments and cases and

1 determines that they do not warrant discussion as they do not affect the outcome of the
2 Motion.

3 It is therefore ordered that Third-Party Defendant Carter Henson, Jr.'s Motion to
4 Dismiss for Lack of Personal Jurisdiction (dkt. no. 202) is granted.

5 All of Third-Party Plaintiffs' claims against Henson are therefore dismissed.

6 DATED THIS 17th day of September 2015.
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9 MIRANDA M. DU
10 UNITED STATES DISTRICT JUDGE
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